

COMMONWEALTH OF MASSACHUSETTS

BEFORE THE

DEPARTMENT OF TELECOMMUNICATIONS  
AND ENERGY

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Complaint of  
FIBER TECHNOLOGIES  
NETWORKS, LLC

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D.T.E. 01-70

PREPARED DIRECT TESTIMONY OF

THOMAS R. JOSIE

ON BEHALF OF

SHREWSBURY'S ELECTRIC LIGHT PLANT

Respondent

November 16, 2001

COMMONWEALTH OF MASSACHUSETTS  
BEFORE THE  
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY  
PREFILED DIRECT TESTIMONY OF  
THOMAS R. JOSIE

1 Q. Please state your name, position and business address.

2 A. I am Thomas R. Josie, General Manager of Shrewsbury's Electric Light Plant ("SELP"),  
3 located at 32 Maple Street in Shrewsbury, Massachusetts.

4

5 Q. On whose behalf are you testifying?

6 A. I am providing testimony in support of SELP's defense of a pole attachment complaint  
7 filed by Fiber Technologies Networks, LLC ("Fibertech").

8

9 Q. Please describe your professional experience.

10 A. I have served as the General Manager of SELP since 1986. Prior to that, I was employed  
11 by Fitchburg Gas & Electric Company as Engineering for 13 years.

12

13 Q. Please describe SELP.

14 A. SELP is a municipal light department owned and operated by the ratepayers of  
15 Shrewsbury, Massachusetts. SELP is the only distributor of electricity to residential,  
16 commercial and industrial customers in the Town of Shrewsbury. SELP has a franchise  
17 to provide cable television service within Shrewsbury. Shrewsbury's Community

1 Cablevision ("SCC") provides traditional CATV video services, Internet service and  
2 resells long-distance telephone service.

3  
4 Q. What are your responsibilities at SELP?

5 A. I am in charge of the day-to-day operations of SELP and Shrewsbury's Community  
6 Cablevision ("SCC"). In that capacity, subject to the direction and control of the  
7 appointed SELP Board of Commissioners, I am responsible for decisions regarding  
8 SELP's purchases of power and supplies, and all aspects of the distribution of electricity  
9 to over 15,000 customers in Shrewsbury, and the transmission of cable television services  
10 to 11,600 customers in Shrewsbury. I am responsible for the overall management of  
11 approximately 50 employees. I am responsible for managing all SELP and SCC plant,  
12 including SELP poles.

13  
14 Q. Please provide a brief history of the events leading up to Fibertech's complaint at the  
15 Department of Telecommunications and Energy ("DTE").

16 A. I was not contacted by an entity using the name of Fibertech until sometime during 2001.  
17 Initially, I was contacted by a company called White Knight Fiber Systems, LLC on June  
18 27, 2000. A copy of that letter is attached to my testimony as Exhibit 1. As you can see  
19 from the letter, White Knight Fiber declined to describe the type of business, if any, it  
20 was engaged in; it simply sought to attach to SELP's poles with no other explanation.

21

1 Then, on or about October 2, 2000, I received a letter from Jennifer Starks of Fiber  
2 Systems, LLC ("Fiber Systems"). In that letter, Ms. Starks stated that Fiber Systems  
3 would like to request a pole attachment agreement and license. A copy of that letter is  
4 attached to my testimony as Exhibit 2. In that letter, Ms. Starks included a list of poles  
5 and locations to which Fiber Systems would be seeking attachment. As you can see, in  
6 that letter Ms. Starks did not describe, at all, what type of service, if any, Fiber Systems  
7 intended to offer over its proposed attachments.  
8

9 Q. What happened after that?

10 A. I believe I had one or two telephone conversations with representatives of Fiber Systems,  
11 including Ms. Starks regarding Fiber System's pole attachment request. During one of  
12 the conversations, I believe I informed Ms. Starks that SELP might permit Fiber Systems  
13 to attach to its poles subject to certain terms and conditions. At this point, neither Fiber  
14 Systems nor Ms. Starks described the nature of their business and did not provide any  
15 information indicating that Fiber Systems was engaged in the transmission of intelligence  
16 by telephone, or was in the cable television business. After obtaining the opinion of  
17 SELP's counsel, I determined that Fiber Systems was not eligible under Massachusetts  
18 law to demand access to SELP's poles under standard rates.  
19

20 Q. What was the significance of that determination?

21 A. It meant that I could, as SELP's General Manager, seek to negotiate on behalf of SELP,  
22 an arrangement whereby, among other things, Fiber Systems could pay market rates,

1        rather than subsidized rates, for the rights to attach to SELP's poles. Ultimately, I sought  
2        the type of arrangement, with terms and conditions, that I believed to be in the best  
3        interest of SELP and its ratepayers.

4  
5    Q.    Please describe the reasoning behind the terms and conditions that were offered by SELP  
6        to Fiber Systems.

7    A.    As custodian of a SELP asset-- its poles-- I sought an arrangement for SELP that would  
8        benefit SELP's ratepayers and best preserve and protect SELP's assets. This is in fact  
9        part of my job as General Manager. Since Fiber Systems was not an entity that was  
10       legally entitled to attach to SELP's poles, our arrangement with Fiber Systems would  
11       simply be the result of a negotiated contract, rather than the standard pole attachment  
12       agreement with standard pole attachment rates (\$4.80 per pole in Shrewsbury annually).  
13       Accordingly, I wanted to make sure that I negotiated an arrangement in which SELP and  
14       its ratepayers received the maximum return on their investment in those poles.

15  
16   Q.    Did SELP refuse to agree to an arrangement proposed by Fiber Systems in which Fiber  
17        Systems would own the fiber on SELP's poles?

18   A.    Yes. That proposed arrangement would not benefit SELP or its ratepayers. Ms. Starks  
19        states in her prefiled testimony in this matter that I refused to assent to any pole  
20        attachment arrangement in which Fiber Systems would own the fiber, allegedly stating  
21        "there's nothing in it for me." First, as a public officer, I must state that I was certainly  
22        not referring to "me" personally. I referred to the fact that there was nothing in Fiber

1 System's proposal *for SELP*. Throughout my discussions with Fiber Systems, and its  
2 successor, Fibertech, I consistently referred to, and advocated for the best interests of  
3 SELP and its ratepayers. Fibertech was well aware that I was working for the interests of  
4 SELP and its ratepayers, and I sincerely wish Fibertech would refrain from insinuating  
5 that my comments meant otherwise. As I explained at the time to Ms. Starks, as the  
6 custodian of a public asset, SELP's poles, I would seek the maximum value for SELP for  
7 the use of SELP's asset, and nothing in Fiber Systems' request appeared to benefit SELP  
8 or its ratepayers, or even the general public interest since it was my understanding that  
9 Fiber Systems would not be providing service to any resident or business in Shrewsbury.  
10 Since Fiber Systems was not an entity that could require SELP to agree to a standard pole  
11 attachment agreement with a standard rate, I would not, and could not, agree to any  
12 arrangement in which SELP and its ratepayers did not benefit from the use of SELP's  
13 assets. That would represent an abdication of my responsibility to manage those assets in  
14 the best interests of the ratepayers.

15  
16 Q. What was Fiber Systems' reaction to your proposal?

17 A. Fiber Systems was not interested in such an arrangement.  
18

19 Q. Why is it important for SELP and its ratepayers to avoid attachments on SELP poles by  
20 companies that are not entitled to attach under the law?

21 A. Every time SELP permits an entity not engaged in the transmission of intelligence by  
22 telephone or electricity, or that is not a cable television company, to attach to its poles, it

1 has given up valuable pole space -- which is forever unrecoverable for future use by  
2 entities entitled by law to attach. Further, once SELP permits an entity like Fibertech to  
3 attach, it would probably have to allow similar companies, that are not entitled under the  
4 law, to attach. This means that at some point in the near future, SELP could run out of  
5 pole space. The result would be taller and taller poles, at a great cost-- financially,  
6 aesthetically, convenience and safety-wise to the citizens of Shrewsbury -- none of whom  
7 would actually ever receive telephony or cable service directly from any such company.  
8 Thus, SELP would seek, as it did with Fibertech, to craft an arrangement that would  
9 produce a definite benefit for the use of SELP's asset.

10  
11 Q. Please describe what happened next in your dealings with Fiber Systems.

12 A. The next development occurred on May 7, 2001, when Mr. Mario Rodriguez and Mr.  
13 Charles Stockdale of a company going by the name of Fibertech came to SELP's office  
14 to meet with me on the issue of attaching to SELP's poles. I specifically recall at that  
15 meeting that one of the two gentlemen from Fibertech I have referred to, stated that as a  
16 utility, SELP was obligated to allow them to attach to SELP's poles, and that Fibertech  
17 was not willing to lease fiber from us. Fibertech's representatives also stated that their  
18 business was dark fiber leasing, the accommodating of private networks, and added that  
19 they were not a "CLEC." I believe that at that meeting, I asked Fibertech's  
20 representatives directly whether or not it was in the business of providing phone or cable  
21 services, and one of the representatives responded that "We do not provide any services.  
22 We lease fiber." At that meeting, Fibertech's representatives stated that they would not

1 lease fiber from SELP because it was not consistent with their company philosophy.

2 Further, SELP's proposal did not meet Fibertech's business plan requirements as it was  
3 too expensive when compared to standard pole attachment fees.

4  
5 Q. When did you hear from Fibertech next?

6 A. On or about May 11, 2001, I received a letter from Charles Stockdale of Fibertech. This  
7 letter is attached as Exhibit 3. The letter refers to a follow up conversation involving  
8 Frank Chiaino, which must have been by telephone after the May 7, 2001 meeting, but I  
9 have no specific recollection of the call. For the first time in writing, Fibertech states in  
10 this letter that it believes it has a right to attach to SELP's poles pursuant to the law. It  
11 still does not state, however, the nature of the business it is engaged in or why it believes  
12 Fibertech is entitled to access SELP's poles.

13  
14 Q. Then what happened?

15 A. I received another letter on or about May 15, 2001, this time from Mario Rodriguez of  
16 Fibertech. This letter is attached as Exhibit 4. I recall speaking on the phone with Mr.  
17 Rodriguez that same day but I do not specifically recall what was said. On May 23,  
18 2001, I believe I telephoned Mr. Rodriguez and reiterated that SELP was going to stand  
19 by its proposed terms and conditions whereby Fibertech would lease fiber from SELP.  
20 On or about June 7, 2001, Fibertech sent SELP another letter from Mr. Rodriguez. This  
21 letter is attached as Exhibit 5. Mr. Rodriguez attached to this letter an opinion from  
22 Fibertech's legal counsel which I then forwarded to SELP's attorneys for review.



1

2 Q. What was the result of that review?

3 A. SELP changed nothing in terms of its proposal to Fibertech as a result of that review  
4 since SELP's counsel's opinion had not changed. On July 19, 2001, I sent Fibertech a  
5 letter on behalf of SELP formally denying Fibertech's request for attachment to SELP's  
6 poles. This letter is attached as Exhibit 6. On advice of counsel, the letter informed  
7 Fibertech that the denial was based on Massachusetts General Laws Chapter 166,  
8 Sections 21, 22 and 25A.

9

10 Q. Was that your last communication with Fibertech?

11 A. No. On or about August 28, 2001, I received Fibertech's complaint in this matter.

12

13 Q. Would you care to address general allegations made by Fibertech in this proceeding that  
14 SELP was "motivated" by some form of "anticompetitive" intent in denying Fibertech's  
15 pole attachment request?

16 A. Yes. First of all, because Fibertech never demonstrated that it was a company that was  
17 transmitting intelligence by telephone or electricity or otherwise, or cable television  
18 signals, SELP was free to negotiate any type of arrangement that the market would bear  
19 with regard to an entity like Fibertech. In fact, I had an obligation to make sure that in  
20 such circumstances, I did not permit the misappropriation of SELP's public assets. Even  
21 during the final few weeks leading up to SELP's denial of Fibertech's request, Fibertech  
22 confirmed that it was not transmitting intelligence, and that it was not providing any

1 actual phone or cable services to anyone in Shrewsbury. The fact that Fibertech  
2 eventually registered as a “CLEC” does not change this fact. It is clear to me that  
3 Fibertech’s registration is solely an attempt to somehow transform its business of dark  
4 fiber leasing to the transmission of intelligence, which it cannot. Moreover, Fibertech’s  
5 decision to register as a CLEC, thereby creating the illusion that it actually transmitted  
6 intelligence by wire or cable, only serves to underscore the fact that SELP’s decision to  
7 deny Fibertech access to its poles under the standard “statutory” rate and terms in the first  
8 place was an appropriate decision. In any event, because Fibertech was not entitled to  
9 attach to SELP’s poles under the law, SELP was free to deny access to Fibertech on any  
10 basis whatsoever.

11  
12 Q. What was that basis?

13 A. In fact SELP did not deny Fibertech access because it viewed Fibertech as its competitor.  
14 Since Fibertech represented that it provided no phone or cable service to end-users, and  
15 SELP is a municipal light department and is not in the business of leasing dark fiber, the  
16 two entities could hardly be viewed as competitors. Moreover, SELP’s actions cannot be  
17 considered anti-competitive in any sense because, as I testified above, SELP stands ready  
18 and willing to provide access to its poles to those entities that transmit intelligence by  
19 telephone, electricity or otherwise, or cable television signals . Ultimately, SELP and  
20 Fibertech could not reach an agreement that would benefit SELP and its ratepayers and  
21 that is why Fibertech is not on SELP’s poles.

22

1 Q. If Fibertech had represented itself as a company that was transmitting intelligence by  
2 telephone, electricity or otherwise, or cable television signals, could SELP have  
3 attempted to negotiate the type of arrangement that it did?

4 A. Of course not; the opinion of SELP's counsel would have been different. If an entity is  
5 engaged in the transmission of intelligence by telephone, or electricity or otherwise, or  
6 cable television signals, SELP would have to negotiate a standard pole attachment  
7 agreement at the standard annual pole attachment rate, and, as I am advised by counsel,  
8 SELP would have to respond to such a pole attachment request within 45 days.

9

10 Q. Does that conclude your testimony?

11 A. Yes it does.

12